UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,276	03/07/2001	Ulrich Haueter	14018	5513

7590 10/30/2002

DAVID E. BRUHN
DORSEY & WHITNEY LLP
SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402

EXAMINER
JEFFERY, JOHN A

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 10/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/801,276	Applicant(s) HAUETER ET AL. GW	
	Examiner John A. Jeffery	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-11 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 07 March 2001 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawing Objections

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sensor introduced into the transducer as claimed in claim 3 must be shown or the feature should be cancelled from the claims. To this end, the accompanying specification description beginning with the last sentence of Page 19 of the instant specification through line 1 of Page 20 requires a depiction of the structure for clarity. Applicant is reminded to amend the specification accordingly in conjunction with the addition of the new figures. No new matter should be entered.

The response to this action must include a separate letter addressed to the examiner and contain: (1) sketches showing ***in red*** the drawing changes required above and (2) a request that the examiner approve the changes as shown on the sketches.

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketches with proposed corrections in red ink is required in response to this office action, and ***may not be deferred***.

Claim Rejections - 35 USC § 112

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1: A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "monitoring the health of a person by a computer," and the claim also recites "monitoring the glucose concentration in a body fluid of the person" which is the narrower statement of the range/limitation. For purposes of examination, the examiner presumes monitoring the glucose concentration of a body fluid was intended to be claimed.

Claim 3: In line 2, "take the measurement value after a sample has been taken" (emphasis added) is vague and indefinite. The claim must be reworded to clarify what is meant by the terms "take" and "taking" with respect to the measurement value and the sample.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, and 6-11 are rejected under 35 USC 102(b) as being anticipated by EP98592. EP98592 discloses a blood glucose measurement module (p. 1, line 5) comprising a transducer comprising radio receiver 18 for wirelessly receiving a transmitted measurement value from radio transmitter 11, the measurement value obtained via sensor 13 comprising electrodes 34, 35.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP98592 in view of Michel et al (US5695623) or Schulman et al (US5660163). The claims differ from the previously cited prior art in calling for introducing the sensor into the

transducer. Inserting and removing sensors from a glucose measurement apparatus is conventional and well known in the art as evidenced by Michel et al (US5695623) noting insertable sensors 1 which facilitate disposing of the used sensors and replacing the used sensors with new ones. Also, Schulman et al (US5660163) discloses provides means 118 for inserting the sensor into a glucose measurement module. See Fig. 1, 4C and col. 9, line 40 - col. 10, line 65. In view of Michel et al (US5695623) or Schulman et al (US5660163), it would have been obvious to one of ordinary skill in the art to provide the capability to insert and remove the sensor from the transducer in order to facilitate the use of disposable sensors thereby avoiding the risk of contamination in subsequent measurements.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP98592 in view of Fischell (US4494950). The claims differ from the previously cited prior art in calling for the module to include a memory to store the measurement value. Providing data storage means in a measurement module which is wirelessly linked to a sensor module is conventional and well known in the art as evidenced by Fischell (US4494950) noting storage means 93. In view of Fischell (US4494950), it would have been obvious to one of ordinary skill in the art to provide a memory to store measurement values in the previously described apparatus so that the values could be retained as needed for display and/or comparison purposes.

Other Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The art should be both separately considered and considered in conjunction with the previously cited prior art when responding to this action. US 862, US 532, US 861, US 586, US 020 disclose wireless monitoring systems relevant to the instant invention.

Conclusion

Any inquiry concerning this or earlier communications from the examiner should be directed to John A. Jeffery at telephone number (703) 306-4601 or fax (703) 305-3463. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM EST. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned are:

Before Final	(703) 872-9302
After Final	(703) 872-9303
Customer Service	(703) 872-9301

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 308-0861.

JOHN A. JEFFERY
PRIMARY EXAMINER

9/26/02